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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-16
Table of Allotments,) RM-11143
FM Broadcasting Stations,)
(Richlands, Shallotte, Topsail Beach, and)
Wrightsville Beach¹, North Carolina))
)

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APR 12 2005

Federal Communications Commission
Office of Secretary

To: The Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

PROCEDURAL RESPONSE TO REPLY COMMENTS

Conner Media Corporation ("Conner"), by its attorney, hereby submits a limited response directed solely to a potentially controlling procedural aspect of the April 5, 2005 "Reply Comments" filed by Sea-Comm, Inc. ("Sea-Comm").

Once the Commission accepts Conner's counterproposal herein, a further opportunity will be provided to address the putative substantive merits of Sea-Comm's Reply Comments. Nonetheless, one issue bears immediate clarification – Sea-Comm's contention that Conner's counterproposal was filed out of time and therefore cannot be given consideration.

According to Sea-Comm, Conner's comments were not received by the FCC's Office of the Secretary until March 29, and therefore were untimely. In support of its claim, Sea-Comm cites Paragraph 6 and Appendix Paragraph 4 of the *Notice of Proposed Rulemaking* herein, DA 05-76, released January 28, 2005 ("NPRM") and Section 1.7 of the Commission's rules. Sea-Comm also refers to an April 1, 2005 Public Notice (DA 05-995, "Filing Requirements in FM Allotment Rulemaking Proceedings"). None of these ostensible authorities supports its claim.

¹ We assume that at some future point the communities of La Grange and Swansboro will be added to the caption, pursuant to the Counterproposal which was timely submitted herein.

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Paragraph 6 of the *NPRM* stated that comments were to be filed at the Office of the Secretary, 445 Twelfth Street, SW, but advises parties to read the Appendix for proper procedures. Paragraph 4 of the Appendix simply states that: "Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554." Those statements in the *NPRM* inadvertently appear to conflict with the Commission's *Public Notice*, Report No. DA 03-2730, released August 22, 2003, which remains in effect and which directs messenger-delivered paper filings to a remote office at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. Section 1.7 of the Commission's rules specifically provides in its entirety as follows:

Unless otherwise provided in this Title, by Public Notice or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

Submitted herewith as Attachment A is the declaration of Lonnie Robertson, Jr. who affirms that the pleading in question in fact was properly filed as required in the Commission's *Public Notice*, DA 03-2730. He further notes that internal distribution of the document is handled by Commission staff after it receives a date-stamp at the Secretary's remote office. Consequently, it is clear that Conner's comments and counterproposal were properly filed in accordance with FCC requirements, as they were timely received at the location designated by the Commission.²

At pages 3-4 of its Reply Comments, Sea-Comm seems to suggest that Conner's comments should be rejected because they were addressed to the Assistant Chief, Audio

² Conner does agree with Sea-Comm in at least one respect – in Note 2 Sea-Comm is at a loss to understand why an "x" appears on one copy of the March 21 receipt stamp on Conner's pleading. Conner does not understand this either. Indeed, Sea-Comm had not identified the source of its copy, which could have been altered by unknown and unofficial hands. We do know that the day after timely filing, we did receive a copy of the first page bearing a March 21 receipted stamp from the Office of the Secretary; a copy is attached hereto as Attachment B.

Division, Media Bureau in lieu of the Secretary, even though they were delivered to the Secretary's designated remote location. It is indeed curious that Sea-Comm, of all parties, should attempt to draw a distinction between where the comments were delivered (in full compliance with operative Commission directives) and how they were addressed (which none of Sea-Comm's cited authorities mentions). Attachment C hereto is the first page of Sea-Comm's own comments in this matter **which were addressed in the very same manner** (*i.e.*: to the Assistant Chief, Audio Division, Media Bureau)! Consequently, if Conner's comments and counterproposal are to be dismissed on this basis, then Sea-Comm's comments must be as well and the entire rulemaking should be dismissed for failure of the proponent (or any other party) to have filed proper comments.³

Sea-Comm further relies upon a Commission Public Notice, DA 05-995, released April 1, 2005 clarifying that rulemaking comments should in fact be **addressed** (and not merely delivered) to the Office of the Secretary rather than to the Commission authority which issued the rulemaking notice and to which comments ultimately are to be directed. Not only would it be unfair to hold Conner responsible for instructions issued the week following its filing, but, as noted above, consistent application of Commission procedural requirements would mandate rejection of Sea-Comm's comments on the very same basis.

³ Sea-Comm's Comments were prefaced with a letter addressed to the FCC Secretary. However, the Secretary Office's webpage (www.fcc.gov/osec/guidelines.html) specifically discourages transmittal letters by noting: "If the filing is self-explanatory, no transmittal letter is required." Even so, for hand-delivered copies, the following instructions are provided (emphasis added):

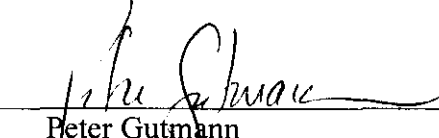
You may receive a stamped, receipt copy (for hand-delivered filings only) by placing a copy of **either** the transmittal letter **or** the first page of the filing on top of the filing package. **One and only one stamped, receipt copy will be issued per filing.**

As the copy of Sea-Comm's Comments received by undersigned counsel has stamps reading "Received Mar 10 2005 Federal Communications Commission Office of Secretary" on **both** the transmittal letter **and** the first page of the comments themselves, it is unclear how Sea-Comm managed to circumvent the Secretary's explicit directive that only one stamped page would be issued per filing. In any event, Sea-Comm should not be permitted to benefit from its own failure to comply with the explicit filing requirements mandated by the Secretary's Office.

In light of the foregoing, Conner respectfully requests that the Commission reject Sea-Comm's speculation that Conner's comments and counterproposal were untimely.

Respectfully Submitted,

CONNER MEDIA CORPORATION

By 
Peter Gutmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, NW
Seventh Floor
Washington, DC 20005
(202) 857-4532

April 12, 2005

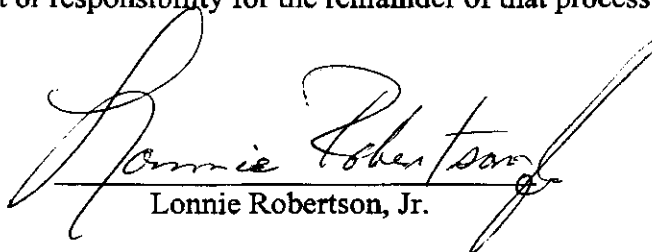
ATTACHMENT A

STATEMENT UNDER PENALTY OF PERJURY

Lonnie Robertson, Jr. states under penalty of perjury that the following is true and correct of his personal knowledge and belief:

1. I am manager of Capital Filing Specialists. Our firm handles all date-stamped FCC filings for Womble Carlyle Sandridge & Rice, PLLC. In fact, I personally handle FCC filings for that firm.
2. The "Comments and Counterproposal of Conner Media Corporation" in MB Docket 05-16 was personally delivered by me to the Federal Communications Commission's Secretary's remote office at 236 Massachusetts Avenue, NE, Suite 110 on March 21, 2005. I personally observed the document being stamped in as received on that date. I returned a copy of the first page, with a date-stamp showing receipt on March 21, to Womble Carlyle's offices the following morning.
3. It is my understanding that material delivered to the 236 Massachusetts Avenue remote office is irradiated and then distributed internally by FCC staff, although I have no personal involvement or responsibility for the remainder of that process.

4/8/05
Date


Lonnie Robertson, Jr.

ATTACHMENT B

STAMP & RETURN

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcasting Stations,)
(Richlands, Shallotte, Topsail Beach, and)
Wrightsville Beach, North Carolina))
)

MB Docket No. 05-16
RM-11143

RECEIVED - FCC

MAR 21 2005

Federal Communication Commission
Bureau / Office

To: Assistant Chief, Audio Division, Media Bureau

**COMMENTS AND COUNTERPROPOSAL OF
CONNER MEDIA CORPORATION**

Conner Media Corporation ("Conner"), by its attorney, pursuant to Sections 1.415, 1.419 and 1.420 of the Commission's rules, hereby submits its comments and a counterproposal in the captioned matter.

INTRODUCTION

The Commission's *Notice of Proposed Rulemaking* herein, DA 05-76, released January 28, 2005 ("*NPRM*") was initiated by a Petition for Rulemaking ("Petition") filed by Sea-Comm, Inc. ("Sea-Comm") and proposed the following changes in three of Sea-Comm's stations: (a) WBNU would move from Channel 279C3 at Shallotte, North Carolina to Channel 279C2 at Wrightsville Beach, North Carolina; (b) WBNE would move from Channel 229A at Wrightsville Beach, North Carolina to Channel 229C3 at Topsail Beach, North Carolina; and (c) WWTB would move from Channel 280C3 at Topsail Beach, North Carolina to Channel 281A at Richlands, North Carolina. The net result would be a substitution of Class C3 stations at Topsail Beach; an upgrade from Class A to Class C2 at Wrightsville Beach; the loss of a Class C3 station

ATTACHMENT C

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 10 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
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Amendment of Section 73.202(b),) MB Docket No. 05-16
Table of Allotments,) RM-11143
FM Broadcast Stations.)
(Richlands, Shallotte, Topsail Beach, and)
Wrightsville Beach, North Carolina))

To: Assistant Chief, Audio Division, Media Bureau

COMMENTS OF SEA-COMM, INC.

Sea-Comm, Inc. ("Petitioner" or "Sea-Comm"), the licensee of primary commercial FM radio broadcasting stations WBNU, Shallotte, North Carolina ("WBNU"), WBNE, Wrightsville Beach, North Carolina ("WBNE"), and WWTB, Topsail Beach, North Carolina ("WWTB;" WWTB, with WBNU and WBNE, collectively, the "Sea-Comm Stations"), hereby submits its comments in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 05-76, adopted January 26, 2005 and released January 28, 2005, 19 FCC Rcd. ____, 70 Fed. Reg. 7220-7221 (published on February 11, 2005) (the "*NPRM*"). The *NPRM* was issued at the behest of Sea-Comm, in response to Sea-Comm's Petition for Rule Making (the "Petition"), filed on April 12, 2004.

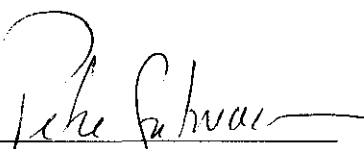
Sea-Comm welcomes the *NPRM*, and hereby incorporates by reference the information set forth in Petition.¹ Sea-Comm hereby reiterates its commitment promptly to apply to the

¹ The only issue that appeared to concern the Commission in the *NPRM* was the question of the so-called "*Tuck*" showing with respect to the independence of the community of Richlands, North Carolina from the Jacksonville, North Carolina Urbanized Area. *NPRM*, at Para. 2. However, inasmuch as the Commission proceeded in the next paragraph of the *NPRM* to state that "[t]his proposal . . . warrants consideration because it (continued...)

CERTIFICATE OF SERVICE

I, Peter Gutmann, an attorney at the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that true copies of the foregoing "Procedural Response to Reply Comments" were mailed, postage prepaid on this 12th day of April, 2005, to the following:

John Griffith Johnson, Jr., Esquire
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004-2400
(Counsel for Sea-Comm, Inc.)



Peter Gutmann